



S/N 09/711,578

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Nora Femenia et al.	Examiner:	Pierre Elisca
Serial No.:	09/711,578	Group Art Unit:	3621
Filed:	November 13, 2000	Docket:	2043.003US1
Title:	AUTOMATED CROSS-CULTURAL CONFLICT MANAGEMENT		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated below:

Applicants have reviewed the office actions and cited references, and respectfully disagrees that certain elements of the pending claims are anticipated or rendered obvious by these references.

Perhaps the most fundamental difference between what is claimed and the cited references is that neither reference presented anticipates the claimed element of managing a dispute about a pre-existing agreement. Tavor is relied upon in the office actions, including in the final office action at p. 5, lines 5-9, to anticipate this element of the pending claims. The office action there alleges that Tavor's exchange of price quotes, discounts, and counter-offers is the same as a dispute regarding a pre-existing agreement. While arguing over price may be considered a dispute of sorts, negotiating terms of a sale as is disclosed in Tavor does not relate to resolving a pre-existing agreement as is recited in the pending claims, but is an attempt to establish an agreement between parties where an agreement as to terms of a potential sale does not yet exist.

Tavor discusses an automatic virtual negotiation system in which price, terms of sale, and other criteria are considered in negotiating a potential purchase of a product. The claims and specification of Tavor address various functions such as setting an offer price, agreeing to purchase at an offered price, offering a discount incentive, and other such elements of pre-purchase negotiation, but do not consider resolution of disputes regarding an agreement that has

already been reached.

Closer inspection of Tavor indicates that in addition to failing to consider managing or resolving a dispute regarding a preexisting agreement, the reference fails to discuss receiving information from parties to a dispute regarding a pre-existing agreement. Tavor also fails to consider iteratively providing portions of information supplied after a start of a dispute where the dispute is about a pre-existing agreement, but considers only pre-sale price negotiation in the absence of a preexisting agreement or dispute regarding such an agreement.

Because several elements of the pending claims relating to resolution of a dispute regarding a preexisting agreement are not found in Tavor, the Tavor reference cannot be used to anticipate these elements of the pending claims. To sustain a valid 35 U.S.C. §103 rejection, the references when combined must teach or suggest all the claim elements. M.P.E.P. § 2142 (citing *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Here, neither reference discusses resolution of a dispute regarding a preexisting arrangement. Further, neither reference discusses receiving information from parties to a dispute regarding a preexisting agreement, or iteratively providing portions of information supplied after a start of a dispute where the dispute is about a pre-existing agreement, as are recited in the pending claims. Because the references when combined fail to teach most elements of the pending claims, the claims are believed to be in condition for allowance.

D'Alessandro is relied upon for its discussion of a different technology involving collecting data to provide an assessment of an organization's performance. More specifically, the answers to survey questions are gathered to evaluate a plurality of predetermined criteria relating to performance of an organization (*see, e.g.*, col. 2, ln. 65-67).

D'Alessandro fails to discuss managing or resolving a dispute, including those regarding a preexisting agreement. It further also fails to discuss receiving information from parties to a dispute regarding a preexisting agreement, but contemplates only collecting survey data regarding an organization's performance. D'Alessandro further fails to consider iteratively providing portions of information supplied after a start of a dispute where the dispute is about a pre-existing agreement, as is recited in the pending claims.

Because Tavor and D'Alessandro are unrelated and do not provide suggestion or motivation for combination with one another, combination of the two cited references in an

attempt to anticipate the pending claims is also improper. The Tavor and D'Alessandro references cited here use very different methods to achieve very different purposes, and neither reference considers combination with the other as would be required to sustain a 35 U.S.C. §103 rejection. Further, even if the references were properly combinable, the fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2143. The Examiner must avoid hindsight. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990)); *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); MPEP § 2143.01.

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CONCLUSION

Applicants respectfully submit that all of the pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is invited to telephone the below-signed attorney at (612) 349-9581 to discuss any questions which may remain with respect to the present application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

NORA FEMENIA ET AL.

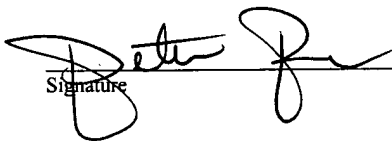
By their Representatives,

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Date Mar. 10 '06 By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10 day of March, 2006.

Peter Rebuffoni
Name


Signature